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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Implementation of Section 25 )  
of the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )  
 )  
Direct Broadcast Satellite )  
Public Service Obligations )  
 )

MM Docket No. 93-25

To: The Commission

COMMENTS OF AMERICA'S HEALTH NETWORK

America's Health Network ("AHN" or the "Network") hereby submits its comments in response to the Commission's January 31, 1997 Public Notice (the "Notice") seeking updated comments in the above-referenced proceeding on implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or the "Act"), which among other things, required the Commission to promulgate regulations to impose a requirement on DBS providers to carry a minimum amount of programming of an educational or informational nature . In particular, these comments address: (i) the definition of "noncommercial programming" in Section 25(b)(2) of the Act; (ii) the identification of entities to which channel capacity must be made available pursuant to Section 25(b)(3); and (iii) the manner and terms on which such capacity shall be made available under Section 25(b)(3).

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## I. Statement of Interest

America's Health Network, which launched in March, 1996, is designed to provide easy access to health-care information to viewers and, in particular, to residents of rural America, which is chronically underserved by the medical community. Studies conducted for AHN prior to its formation and launch demonstrated an extremely strong but previously unmet consumer demand for health and medical information delivered via television. Positive subscriber response to the Network has continued to reinforce these findings. As a result, AHN is distributed to over six million television households today and continues to grow.

AHN is a single-feed, 24-hour network with programming consisting of 100 percent original productions<sup>1</sup>. AHN also is one of a few networks offered on basic cable that will be available to the Spanish-speaking audience through a full Spanish language audio track. Among the Network's featured programs are live, unscripted call-in "Ask the Doctor" shows in which doctors respond to viewers' most pressing health questions. Featured in these programs are some of the country's leading authorities in a broad range of medical specialties including pediatrics, obstetrics and gynecology, nutrition, family medicine, family therapy, and veterinary medicine. The Network maintains a staff of medically-trained call screeners, under supervision of a registered nurse, who assist callers in framing questions appropriately for broadcast. Effective during the fourth quarter of 1997, calls from Spanish-speaking viewers will be referred to Spanish-speaking screeners, who will translate the questions into English for the on-air physicians. The physician's response will be available in two languages -- over the air in English

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<sup>1</sup> 50% (12 hours per day) of the Network's programming is transmitted live, while the remainder consists of selected rebroadcasts of those live transmissions during off-peak viewing periods.

Network's Spanish language audio track. Although the 600 or more calls AHN receives per day exceed the number that can be answered by physicians live on the air, call screeners give callers whose questions cannot be aired the option of going into an automated data bank of answers to the 500 most frequently asked questions in six medical specialties. In addition, AHN's viewer relations staff reviews and refers a heavy volume of viewer mail to physicians for further referral to health-related organizations and resources with which AHN maintains a relationship, including the Cystic Fibrosis Foundation, the Lung Association, the American Heart Association, and many other organizations dedicated to research and treatment of Alzheimer's, diabetes, cancer and other diseases. Content support for AHN's programming in the form of medical illustrations, graphics and animations is provided by the Mayo Clinic's electronic publisher (IVI Publishing), and the programming also includes videotaped medical procedures and live demonstrations of various medical techniques and practices. As the only provider of round-the-clock televised medical and health-oriented information, AHN provides precisely the type of educational/informational content that Section 25 of the Act was designed to foster.<sup>2</sup>

II. To Encourage the Most Productive and Beneficial Use of DBS Capacity for Educational and Informational Programming, the Commission Should Take an Inclusive, Flexible Approach

AHN agrees with many of the comments, submitted earlier in this proceeding, urging the Commission to take an inclusive, flexible approach in implementing the Section 25(b) requirement that DBS providers set aside a portion of their channel capacity for "noncommercial

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<sup>2</sup> Although AHN's current network feed is advertiser supported, the Network is exploring the creation of non-commercial or commercial-free programming products that could fulfill DBS obligations under Section 25(b) if the Commission adopts the approach recommended herein.

programming of an educational or informational nature.”<sup>3</sup> If anything, the case for such flexibility is even more compelling today than it was when the comments originally were submitted. As the Commission recognized in its *Notice*, the DBS industry has grown and changed dramatically during the last four years. With a growing number of households (around seven million) receiving television programming via DBS, DBS is gaining increasing importance and value as a means of informing and educating the viewing public. In addition, the amount and variety of programming being produced with educational or informational content has increased and continues to do so.<sup>4</sup>

The Act allows the Commission to be flexible in crafting rules to implement the public service requirements. Thus, for the Commission to adopt a more restrictive approach than the Act requires as the sources that can provide the programming, the manner in which the programming is offered or the financial arrangements among DBS providers and program sources, would seriously and unnecessarily restrict the variety, quality, and richness of programming that will be available. The public interest would suffer greatly if the television audience were denied the benefits of the unique programming produced by AHN or the tremendous variety of new programming that has become available during the past four years and that will continue to become available in the future.

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<sup>3</sup> See, e.g., comments of Consumer Federation of America (“CFA”) at 18; Primestar Partners, L.P. Comments at 20 and Reply Comments at 11; Reply Comments of Satellite Broadcasting and Communications Association (“SBCA”) at 8; and Comments of Discovery Communications, Inc. at 10-13.

<sup>4</sup> It was reported that over 25 new networks had launched or were scheduled to launch during 1996 alone. These included several new news channels as well as a variety of channels featuring programming with educational or informational content. See *Broadcasting & Cable*, December 30, 1995 at 37-48.

III. The Commission Should Take an Expansive View Toward the Eligible Sources of Noncommercial Programming of an Educational or Informational Nature.

The Statement of Policy in the 1992 Act, of which Section 25 was a part, makes it clear that one of the principal purposes of the Act was “to promote the availability to the public of a diversity of views and information through cable television and other video distribution media.” [Pub. L. No. 102-385, § 2(b)(1), 1992 U.S.C.C.A.N. (106 Stat.) 1460.] Thus, implementing rules that restrict the sources of programming on the reserved channel capacity to a select few entities would be inconsistent with the legislative purpose of the provision. As earlier comments have pointed out, the Act’s definition of “national educational programming suppliers” to which DBS providers must make the dedicated channel capacity available is illustrative of the types of entities on which DBS providers may rely to provide the programming, *but does not stipulate that these entities are the only qualified providers.* See, e.g., Comments of DirecTV, Inc. at 23.

Although the entities cited as possible sources of informational and educational programming in the Act generally are not-for-profit or non-commercial entities, the Act does not require that programming presented on the reserved capacity must be produced by a non-profit entity of the type described or, as public broadcasting comments advocate, only organizations or entities qualifying under Section 397 of the Communications Act.<sup>5</sup> To so confine the list of qualified providers would seriously and unnecessarily limit the variety and quality of the programming made available to viewers as part of the DBS public service obligation. AHN, as the only television source of round-the-clock health and medical information and one of the few

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<sup>5</sup> See, e.g., Comments of Association of America’s Public Television Station (“APTS”) and Corporation for Public Broadcasting (“CPB”) at 23.

basic cable services with a full Spanish audio track, certainly is prototypical of the new crop of niche programmers adding to the variety of informational and educational programming available. By adopting the position of earlier comments advocating that only the programming of public stations and related entities qualify to fill the set-aside capacity, the Commission will be denying the viewing audience of hours of extremely valuable, enjoyable, and diverse programming. It is doubtful that the abundance of high-quality medical information and health-related educational material that can be provided on a non-commercial basis by or through AHN will be available from any other source, as it certainly is not being provided by any source other than AHN today. A more comprehensive view of eligible programming sources -- one that includes any entity that provides the programming in question on a commercial-free or otherwise non-commercial basis -- would benefit the public both by taking the utmost advantage of the array of unique and valuable educational and informational fare that currently exists as well as by encouraging other programmers to provide the types of programming contemplated by the Act.

IV. The Commission Also Should Be Flexible With Regard to the Format and Manner in Which the DBS Set-aside Is Utilized. \_\_\_\_\_

Flexibility also is necessary with respect to the way in which DBS providers fill the channel capacity set aside for educational or informational purposes. The Act does not require that each set-aside channel be filled by just one entity or program source. Rather, the Act permits, *and the rules should allow*, DBS providers to rely on a variety of sources, be they providers of entire channels, blocks of programming or individual programs, to fill the reserved channel space. The programming requirements of Section 25(b) should be deemed met if providers of DBS service combine qualifying programming until the amount of *channel time* equivalent to the number of designated channels is filled. Recent trends in the programming industry such as the development of new programming through “nesting” arrangements with

established networks and technological developments such as channel compression suggest that alternatives to traditional “channels” may emerge. Entities may be formed to package programming or coordinate use of set-aside DBS capacity by numerous entities for presentation of noncommercial programming of an educational or informational nature. Flexible rules would permit the establishment of this type of arrangement and afford another avenue for a variety of program suppliers, including AHN, or others who might not otherwise do so, to provide programming. As new program formats and ways of utilizing channels emerge, flexible rules will make it possible to take advantage of new developments as rapidly and effectively as possible.

V.     The Rules Should Remain Flexible With Regard to  
Financial Relationships Between DBS Providers and  
Programming Sources.

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The Act requires that the capacity being set aside be made available to eligible program suppliers “upon reasonable prices, terms and conditions, as determined by the Commission,” in accordance with standards contained in paragraph (b)(4) of the provision. So long as the price to the programmer for using such a channel does not exceed the amount permitted by the Act, the financial arrangements between the DBS provider and the program supplier should not be regulated. It should not matter, for example, if the DBS provider makes capacity available for presentation of eligible programming *at no charge* to the program supplier or even if the DBS provider compensates providers of commercial-free blocks or channels of educational or informational programming in certain circumstances. A flexible regulatory approach with respect to financial arrangements would contribute significantly to the development of additional sources of eligible programming, would permit and even encourage a greater number of suppliers to enter the field and ultimately would result in the enhanced quality of such offerings.

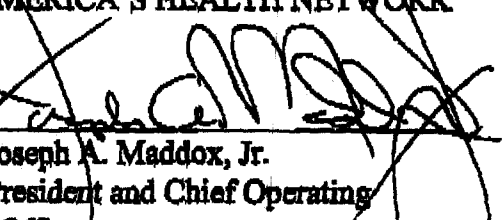
## **VI. Conclusion**

Variety, value and quality of programming are certainly as important as (if not more important than) the quantity of programming in achieving the goal of increasing the availability of noncommercial programming of an educational or informational nature. AFN has made a substantial investment in a programming service that meets important but previously unserved needs for televised information and education in the fields of health and medicine. Likewise, many other programmers have developed new programming formats and genres to educate and inform the viewing public. The strong public interest in educational and informational programming that is diverse, valuable and excellent will be served best through unrestrictive, flexible rules that allow the current climate of innovation to continue.

Respectfully submitted,

**AMERICA'S HEALTH NETWORK**

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April 28, 1997